THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.27442 OF 2005

Dated: 23-12-2005

Between

V. Haritha Priya, W/o. T. Suraj,

R/o. LIC Model Housing Colony,

Basaveshwara Nagar, Bangalore –79

and another.

...PETITIONER

AND

Union of India, Ministry of Finance,

Rep. by its Secretary Finance,

New Delhi and others.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Certiorari to call for the records leading in issuance of the impugned notice dated 03.12.2005 of respondents 2 and 4 under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') and declare the same as illegal and arbitrary.

Learned counsel for the petitioners submits that the father of the petitioners borrowed certain amount from the second respondent bank mortgaging certain properties in favour of the bank. While so, the second respondent issued a public notice dated 01.10.2005 in a local daily newspaper under Section 13(2) of the Act calling upon the father of the petitioners

to repay an amount of Rs.1,48,19,577/- within sixty days and taking possession of the properties bearing D.No.3-309 and 3-310 situate at Pagadamnu Greamspet, Chittoor. In reply to the said publication the petitioners got issued a legal notice dated 23.11.2005 through counsel stating that the petitioners were minors at the time of taking the loan and they have no knowledge about the debt and they have a share in the said property. It is further stated that partition has also taken place. However, without considering the said legal notice the fourth respondent issued the impugned possession notice under Section 13(4) of the Act.

Section 17 of the Act states that any person aggrieved by the proceedings under Section 13(4) of the Act has got a right to appeal before the Debts Recovery Tribunal.

This Court is of the opinion that when an effective alternative remedy of right to appeal to the Debts Recovery Tribunal under Section 17 of the Act is available to the petitioners, it is not just and proper to entertain the writ petition. The writ petition is accordingly dismissed with a liberty to the petitioners to avail the effective alternative remedy under Section 17 of the Act.

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V. ESWARAIAH, J

December 23, 2005

DSK